

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3416 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

GUNVANTRAI MULJIBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

MR AJ SHASTRI for Petitioner
NOTICE SERVED BY DS for Respondent No. 1
MR BP DALAL for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/06/98

ORAL JUDGEMENT

Rule. In facts and circumstances of the case, the matter is taken up for final disposal today.

2. This petition under Articles 226 and 227 of the Constitution challenges the order dated 6.4.1998 passed by the State Government rejecting the petitioner's application for interim stay during pendency of revision application SRD No. 27 of 1997. The revisional

authority had earlier granted ad-interim relief on 11.11.1997 which ad-interim relief was to operate till 31.3.1998. Although the revision application was not heard, the ad-interim relief was not extended. Hence, the present petition is filed.

3. The learned counsel for the petitioner states that in Special Civil Suit No. 72 of 1986 the learned Civil Judge (Senior Division), Junagadh had passed orders dated 5.5.1986 and 6.10.1987 below application Exh. 5 restraining Kaji Mohmad Hussain Mahmadiya and Kaji Mohmad Sidik Mahmadiya (respondent Nos. 6 and 7 herein) from selling, alienating or otherwise transferring the suit land bearing Survey No. 137 in village Prabhas-Patan during pendency of the suit. Mr Shastri states that however inspite of the said ad-interim/interim order being operative and in defiance of the said injunction, the aforesaid parties i.e. respondent Nos. 6 and 7 herein purported to transfer the land to respondent Nos. 3, 4 and 5 in April, 1987. On the basis of the aforesaid transfers, mutation entries came to be made in the revenue record which were challenged by an appeal by filed by the petitioner before the Deputy Collector and by his order dated 27.1.1997, the Deputy Collector allowed the appeal and directed the Mamatdar to cancel the entries on the basis of the aforesaid transfers.

4. Aggrieved by the aforesaid order of the Deputy Collector, respondent Nos. 3, 4 and 5 filed revision application before the Collector, Junagadh who was pleased to set aside the order dated 27.1.1997 of the Deputy Collector and thereafter declined to grant any further relief to either of the parties.

5. Aggrieved by the aforesaid order of the Collector, the petitioner has filed revision application No. 27 of 1997 before the State of Gujarat on whose behalf the revision is being heard by the Secretary (Appeals). Initially, ad-interim relief was granted on 11.11.1997 which was to operate till 31.3.1998. However, it was not continued thereafter as per the communication dated 6.4.1998. It is the aforesaid order of the revisional authority which is under challenge in the present petition.

6. The learned counsel for the petitioner has submitted that after the ad-interim relief was granted by the revisional authority on 11.11.1997, there was no further hearing of the revision application nor was there any change of circumstances. Even then the revisional

authority refused to extend the ad-interim relief and that too without giving any reasons in the said order dated 6.4.1998 (Annexure "E" to the petition). The learned counsel has further submitted that the petitioner is ready to go for final hearing of the revision application at the earliest but in the meantime the ad-interim relief granted earlier should be continued.

7. On the other hand, Mr Dalal for respondent Nos. 3, 4 and 5 has submitted that the impugned order is only an interlocutory order which need not be interfered with under Articles 226 and 227 of the Constitution. It is further submitted that the Civil Suit is pending and, therefore, the Collector was justified in passing the impugned order dated 29.10.1997.

8. Having heard the learned counsel for the parties, it appears to the court that in view of the pendency of the revision application before the State Government, without expressing any opinion on the merits of the controversy between the parties, it would be just and proper to direct the revisional authority, respondent No. 1 herein, to hear and decide the pending revision application i.e. Revision Application SRD No. 27 of 1997 as expeditiously as possible and preferably within a period of three months from the date of receipt of this order and further to direct that the ad-interim stay which was granted earlier by the revisional authority on 11.11.1997 shall continue till disposal of the revision application.

This order is passed in view of the assurance held out by the learned counsel for the petitioner that the petitioner as well as his learned advocate before the revisional authority shall co-operate for expeditious disposal of the revision application.

9. The petition is accordingly allowed to the extent that ad-interim stay of the order of the Collector granted by the revisional authority on 11.11.1997 in revision application SRD No. 27 of 1997 shall continue till disposal of the revision application and the revisional authority shall hear and decide the revision application as expeditiously as possible and preferably within three months from the date of receipt of this order.

Rule is made absolute to the aforesaid extent.

Sd/-

June 25, 1998 (M.S. Shah, J)

